

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

DEANNA BRANAUGH and
MOLLY THAYER,

Plaintiffs,

v.

BOLIVER WITTERN and
DERBY TRUCKING, LLC,

Defendants.

Case No. 22-4037

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiffs, by and through their counsel, Cutler Law Firm, LLP, for their causes of action against the above-named Defendants, state and allege as follows:

THE PARTIES

1. Plaintiffs Deanna Branaugh and Molly Thayer are mother and daughter and are residents of South Dakota.

2. At all times relevant, Defendant Derby Trucking, LLC was an Iowa Corporation with its principal place of business in Iowa.

3. Upon information and belief, Defendant Boliver Wittern was at all times relevant a resident of Sioux City, Iowa, and an employee of Derby Trucking acting within the scope of his employment or agency.

JURISDICTION AND VENUE

4. The amount in controversy between each of the Plaintiffs and each of the Defendants exceeds the sum of \$75,000, exclusive of interest and costs.

5. Jurisdiction of this Court is conferred by 28 USC § 1332.

FACTUAL BASIS

6. On or about September 24, 2020, Plaintiff Deanna Branaugh was driving a 2018 Chevrolet Equinox northbound on South Dakota Highway 37 near its intersection with South Dakota Highway 46 in Bon Homme County, South Dakota.

7. Plaintiff Molly Thayer was a passenger in the vehicle driven by Deanna Branaugh.

8. South Dakota Highway 37 is a two-way, undivided roadway with a posted speed limit of 65 miles per hour.

9. Defendant Wittern was driving a 2020 International semi-tractor and trailer southbound on South Dakota Highway 37.

10. Defendant Wittern began to make a left turn onto South Dakota Highway 46 and pulled directly into the path of the vehicle in which the Plaintiffs were traveling.

11. Defendant Wittern failed to yield to Plaintiffs' vehicle.

12. Defendant Wittern collided with Plaintiffs' vehicle at the intersection of Highway 37 and Highway 46.

13. The South Dakota Highway Patrol was notified of the crash and Trooper Emily Brigham responded to the scene.

14. Trooper Brigham noted in her report that Defendant Wittern began a left turn when Plaintiff Deanna Branaugh's vehicle was only a short distance away and traveling the speed limit of 65 miles per hour.

15. Deanna Branaugh was at all times operating her vehicle in a safe and lawful manner for the road conditions and despite taking reasonable evasive action was unable to avoid the collision with Defendant Wittern, who appeared suddenly and without warning in Plaintiffs' lane of travel.

16. Trooper Brigham issued a citation to Defendant Wittern for failure to yield to right-of-way in violation of SDCL § 32-26-19.

17. Plaintiffs were transported to Avera St. Michael's Hospital in Tyndall, South Dakota for treatment of their injuries.

18. As a direct and proximate result of Defendant Wittern's actions, Plaintiffs sustained the damages described herein, for which Defendant Wittern and Defendant Derby Trucking are liable.

COUNT 1: NEGLIGENCE

19. Plaintiffs reallege the preceding paragraphs of this Complaint and incorporate them by reference as if fully set forth herein.

20. Defendant Wittern operated his vehicle in a negligent and careless manner, including, but not limited to: (a) driving without due caution; (b) failing to keep a proper watch; (c) failure to yield; (d) reckless and/or careless driving; and (e) operating his vehicle without regard to the presence or physical safety of Plaintiffs.

21. As a direct and proximate result of Defendant Wittern's negligence, Plaintiffs suffered injuries that are permanent and disabling which required medical treatment and resulted in medical expenses.

22. As a direct and proximate result of Defendant's negligence, Plaintiffs have experienced and will experience in the future, physical pain, suffering, mental anguish, loss of enjoyment of life, disability, emotional distress, and embarrassment.

23. As a direct and proximate result of Defendant's negligence, Plaintiffs have incurred, and will likely incur in the future, expenses for medical care, lost income and other expenses.

COUNT 2: NEGLIGENCE PER SE

24. Plaintiffs reallege the preceding paragraphs of this Complaint and incorporate them by reference as if fully set forth herein.

25. Law enforcement cited Defendant Wittern for violating SDCL § 32-26-19 because he failed to yield to Plaintiffs.

26. SDCL § 32-26-19 is designed to protect the public safety of travelers on public roads and highways.

27. Plaintiffs are a member of a class of people meant to be protected by SDCL § 32-26-19.

28. Defendant's conduct constitutes negligence as a matter of law.

29. As a direct and proximate result of Defendant's negligence, Plaintiffs suffered injuries that are permanent and disabling which required medical treatment and resulted in medical expenses.

30. As a direct and proximate result of Defendant's negligence, Plaintiffs have experienced, and will experience in the future, physical pain, suffering, mental anguish, loss of enjoyment of life, disability, emotional distress, and embarrassment.

31. As a direct and proximate result of Defendant's negligence, Plaintiffs have incurred, and will likely incur in the future, expenses for medical care, lost income and other expenses.

COUNT 3: NEGLIGENCE PER SE

32. Plaintiffs reallege the preceding paragraphs of this Complaint and incorporate them by reference as if fully set forth herein.

33. The crash and resulting injuries and damages to Plaintiffs were caused solely by the negligence of Defendant Wittern.

34. Defendant Wittern was operating his vehicle on behalf of Defendant Derby Trucking.

35. The crash with Plaintiffs occurred within the course and scope of Defendant Wittern's employment with Defendant Derby Trucking.

36. Defendant Wittern was operating his vehicle for the benefit of, or in furtherance of the interests of, Defendant Derby Trucking.

37. Defendant Wittern's actions when he struck Plaintiffs' vehicle were reasonably foreseeable and thus imputable to Defendant Derby Trucking under the doctrine of respondeat superior.

38. As a result of Defendant Wittern's negligence, Defendant Derby Trucking is vicariously liable for Defendant Wittern's negligent acts.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request a judgment against Defendants as follows:

1. For full and fair compensatory, general, and special damages in an amount which the jury determines is just and proper to compensate Plaintiffs for all injuries sustained as a result of Defendants' conduct;

2. For Plaintiffs' costs and disbursements herein;

3. For interest as allowed by law; and

4. For any other and further relief which the Court determines is just and proper.

PLAINTIFFS DEMAND TRIAL BY JURY

Dated this 14th day of March, 2022.

CUTLER LAW FIRM, LLP



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Attorneys for Plaintiffs

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Deanna Branaugh and Molly Thayer

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (*Firm Name, Address, and Telephone Number*)Michael D. Bornitz
Cutler Law Firm, LLP
140 N. Phillips Ave., 4th Floor**DEFENDANTS**

Boliver Wittern and Derby Trucking, LLC

County of Residence of First Listed Defendant _____

*(IN U.S. PLAINTIFF CASES ONLY)*NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.Attorneys (*If Known*)**II. BASIS OF JURISDICTION** (*Place an "X" in One Box Only*)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question
<i>(U.S. Government Not a Party)</i> |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity
<i>(Indicate Citizenship of Parties in Item III)</i> |

III. CITIZENSHIP OF PRINCIPAL PARTIES (*Place an "X" in One Box for Plaintiff and One Box for Defendant*)
(For Diversity Cases Only)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (*Place an "X" in One Box Only*)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	375 False Claims Act
<input type="checkbox"/> 120 Marine	310 Airplane	365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	315 Airplane Product Liability	367 Health Care/ Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	320 Assault, Libel & Slander	368 Asbestos Personal Injury Product Liability	INTELLECTUAL PROPERTY RIGHTS	410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	370 Other Fraud	<input type="checkbox"/> 820 Copyrights	430 Banks and Banking
<input checked="" type="checkbox"/> 151 Medicare Act	340 Marine	371 Truth in Lending	<input type="checkbox"/> 830 Patent	450 Commerce
<input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	380 Other Personal Property Damage	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	385 Property Damage Product Liability	<input type="checkbox"/> 840 Trademark	470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	355 Motor Vehicle	LABOR	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	Product Liability	710 Fair Labor Standards Act	SOCIAL SECURITY	485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	360 Other Personal Injury	720 Labor/Management Relations	<input type="checkbox"/> 861 HIA (1395ff)	490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise	362 Personal Injury - Medical Malpractice	740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	751 Family and Medical Leave Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	440 Other Civil Rights	790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	441 Voting	791 Employee Retirement Income Security Act	<input type="checkbox"/> 865 RSI (405(g))	893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	442 Employment	IMMIGRATION	FEDERAL TAX SUITS	895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	443 Housing/ Accommodations	462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	896 Arbitration
<input type="checkbox"/> 245 Tort Product Liability	445 Amer. w/Disabilities - Employment	465 Other Immigration Actions	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 290 All Other Real Property	446 Amer. w/Disabilities - Other			950 Constitutionality of State Statutes
	448 Education			

V. ORIGIN (*Place an "X" in One Box Only*)

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*): _____**VI. CAUSE OF ACTION**Brief description of cause:
Personal Injury - Commercial Carrier Motor Vehicle Collision**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY***(See instructions):*

JUDGE _____

DOCKET NUMBER _____

DATE

March 14, 2022

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT # _____ AMOUNT _____

APPLYING IFFP _____

JUDGE _____

MAG. JUDGE _____